

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Sunol, CA)

STRATOS MOBILE NETWORK, LLC

Employer¹

and

Case 32-RC-4589

TEAMSTERS LOCAL 78, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, a Delaware corporation, is engaged in providing satellite communications services at various locations, including Sunol, California. During the past twelve months the Employer derived revenues in excess of \$100,000 and purchased and received goods valued in excess of \$5,000 which originated outside the State of California. In such circumstances, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

¹ The name of the Employer appears as amended at the hearing.

² The name of Petitioner appears as amended at the hearing.

4. Petitioner claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. As noted above, the Employer provides satellite communications services at its Sunol, California facility. More specifically, the Employer provides maritime voice, data and telex services to ships in the Pacific and west Atlantic oceans. The Employer's Sunol earth station is comprised of a main building, which houses offices and/or office areas, a large communications area, a power plant, and an employee lunchroom. In addition to this primary facility there are four separate "shelters" which house antennas and related equipment. There are nine employees employed at the Sunol earth station: Kenneth Woodfield, the station director; Maria Blakley, the administrative assistant; Randal McKay, the station's "supervisor;" three senior technicians; and three technicians. The Sunol station operates on a 24-hours-a-day, 7-days-a-week basis. Woodfield and Blakley work Mondays through Friday, between the hours 7:30 a.m. to 3:30 p.m. and 8:00 a.m. to 4:00 p.m. respectively. McKay and the technicians work four 10-hour shifts, on overlapping day and swing shifts and a night shift. The technicians are responsible for checking and maintaining the equipment used at the facility, including its power systems and back-up generators, and insuring that the antennas are tracking the right satellite and that the levels and frequencies of the signals being sent out are correct. All of the employees are hourly paid and eligible to receive overtime, fill out time cards, and have available to them common benefits. The wages of the technicians, calculated on an annual basis, range from a starting rate of \$36,000 to a senior technician's high rate of \$47,000. McKay receives a salary of \$50,000 a year, while Blakley earns approximately \$25,000 a year.

Petitioner seeks to represent all of the Sunol earth station employees except station director Kenneth Woodfield. The Employer contends that Randal McKay is a statutory supervisor and should be excluded from the unit on that basis. The Employer also contends that Maria Blakley will be a confidential employee if the Sunol facility becomes unionized and that she also separately lacks a sufficient community of interest with the technicians and thus should be excluded on both of those grounds. For the reasons set forth below, I find it appropriate to include both McKay and Blakley in the requested unit.

Randal McKay. Prior to November 1998 McKay was a senior technician earning a salary of between \$44,000-45,000 a year. In November 1998 McKay was promoted to the "supervisor" position and received a raise to his current annual salary of \$50,000. According to the Employer, at that time McKay was given a job description which states, *inter alia*, that the supervisor ". . . provides input to the Station Director in the job performance reviews, disciplinary actions, as well assisting the Station Director in scheduling of work shift assignments and activities." According to McKay, he was never given a copy of that job description before he was promoted and he did not have any

discussion with Woodfield concerning what additional duties or responsibilities he would have as station supervisor. Rather, McKay testified that he understood that his enhanced responsibilities as a “supervisor” were to keep things at the facility running smoothly and to keep a particular eye out for the “off” shifts, i.e., the mid- and weekend shifts, where the newer and less experienced employees were assigned. Assuming that McKay was somehow informed at the time of his promotion that his duties as a “supervisor” would include providing input to Woodfield regarding employee evaluations and disciplinary actions and assisting him in making work schedules and assignments, I find that these additional duties or responsibilities do not involve the type of independent judgment or exercise of effective recommendation authority sufficient to make him a statutory supervisor.

Initially, I find that McKay’s involvement in preparing work schedules or work assignments is plainly insufficient to make him a statutory supervisor. In this regard, Woodfield testified that he gives the work of the station to McKay to assign and that McKay prepares a monthly schedule of periodic maintenance (PMIs), which assigns certain work to certain shifts. Once PMI work is assigned to a shift, the individual employees on that shift decide which of that work they will do and they check off the PMI list what work has been done. There is little evidence that any independent judgment is involved in preparing these PMIs; the tasks involved are required to be performed on a periodic basis and certain work is assigned to certain shifts because of safety factors and/or the known qualifications of the employees on a certain shift. Woodfield testified that he made out the PMIs when he was a lead technician, that McKay spends very little of his time making up of the PMIs, and that Dottie Smith, a technician, also did that work as well. Given this evidence, I cannot find that McKay’s involvement in the preparation of the PMIs involves any exercise of independent judgment or reflects the exercise of any statutory supervisory authority.

Likewise, I do not find that McKay has any significant role in the evaluation and/or disciplining of employees or in granting them raises. To a large extent the Employer’s contention that McKay has effective recommendational authority in these areas is based on Woodfield’s own experience as the station’s supervisor prior to his promotion to station director. In this regard, Woodfield testified that when he was the station supervisor he discussed the job performance of each employee with his station director and made recommendations to the director about each employee and the amount of any raise which the employee should receive. Woodfield acknowledged, however, that the director did not always agree with his recommendations and in those situations the two of them would have to “work out” their differences. Based on Woodfield’s own testimony, it is clear that even when he was the station supervisor his recommendations concerning employee evaluations and/or raises were independently reviewed by the station director, and there is no reason to conclude that Woodfield, as the current station director, would not likewise independently review any similar recommendations made by McKay. In such circumstances, even Woodfield’s recommendations made when he was the station supervisor do not establish that he possessed or exercised effective supervisory authority. See *Hawaiian Telephone Co.*, 186 NLRB 1 (1970); *Chevron U.S.A., Inc.*, 309 NLRB 59, 65 (1992); and *Brown & Root, Inc.*, 314 NLRB 19, 22-23

(safety inspectors) (1994). Moreover, there is other evidence which indicates that McKay's involvement in the evaluation of employees is quite limited and not as meaningful as the Employer contends. Woodfield testified that two new employees were hired after McKay became the station supervisor but that he (Woodfield) alone interviewed those employees and made the decision to hire them. Likewise, Woodfield testified that while he "informally" asked McKay for his thoughts about two recently-hired probationary employees, he also asked all of the technicians what they thought of them. This last evidence further indicates that whatever "input" McKay might provide to Woodfield concerning employees' work performance is no different than that provided by other employees and does not reflect the exercise of effective recommendational authority. See *Chevron U.S.A., Inc., supra*, at 63-64.

Similarly, I find what involvement McKay has in the assignment of overtime to employees or in providing them with work guidance or instruction to be hardly reflective of the exercise of statutory supervisory authority. McKay's involvement in the assignment of overtime is extremely limited. Woodfield, the station director, is responsible for assigning overtime in non-emergency situations, and *all* technicians are authorized to call in the designated "on-call" technician during emergency situations. Likewise, while McKay provides guidance and instructions to less experienced employees and may even advise them how to prioritize their work, he also testified that other senior technicians do this as well.

Finally, the fact that McKay may hold the title of "supervisor" is not dispositive, see *EDP Medical Computer Systems Inc. et al.*, 284 NLRB 1232, 1262 (Ivy Valentine) (1987), particularly where there is no evidence that any employee viewed that title as vesting in him any authority over their working conditions. Likewise, the fact that McKay is paid slightly more than the highest-paid senior technician cannot be considered significant, given the fact that Woodfield earned that same salary when he was a senior technician. Moreover, in the absence of primary indicia as enumerated in Section 2(11) of the Act, the presence of a secondary indicia of supervisory status - a higher rate of pay - is insufficient to establish supervisory status. *S.D.I. Operating Partners, L.P.*, 321 NLRB 111, fn. 2 (1996).

In summary, and based on the foregoing and the record as a whole, I find the evidence insufficient to establish that Randal McKay is a statutory supervisor. Accordingly, McKay is included in the unit herein found appropriate.

Maria Blakley: Maria Blakley became Woodfield's administrative assistant in February 1999. Blakley's duties are essentially clerical in nature: she is responsible for answering the telephone, processing mail, filing, and doing some shipping and receiving work. It also appears that Blakley will be expected to attend meetings which Woodfield may hold with customers and to take notes of those meetings. Blakley works in a cubicle in the main building; behind her cubicle is Woodfield's office and adjacent to it is an open area where the technicians work. Blakley is in daily contact with technicians and they freely use her desk and computer. Blakley also works directly with Dottie Smith,

one of the technicians, in preparing materials to be shipped out. On those occasions when Blakley cannot answer the telephone, a technician who is in the building will. Before Blakley was hired the administrative assistant's position was vacant for about 7 months; during that time Woodfield and technician Dottie Smith performed that position's duties.

According to the Employer, if its Sunol facility becomes unionized Blakley will be a confidential employee because: (1) Woodfield will be involved in formulating, determining and effectuating labor relations policies; and (2) Blakley will be expected to assist Woodfield in his handling of those labor relations matters. The Employer's arguments here, however, are based on pure speculation and therefore cannot be given any weight. Accordingly, I reject its contention that Blakley should be excluded from the unit because she will be a confidential employee.

I likewise reject the Employer's contention that Blakley lacks a sufficient community of interest to be included in a unit of technicians. Preliminarily, I note that Blakley and the technicians share certain common interests, i.e., all are hourly paid, all receive and/or are entitled to the same fringe benefits, all work in a common building, and all work under the supervision of station director Woodfield. In addition, Blakley is in daily contact with the technicians whose work hours overlap hers. In addition, even though Blakley performs some work that appears "office clerical" in nature, such as answering the telephone and filing, she also does work that appears "plant clerical" in nature, such as maintaining the "site inventory database," controlling end-of-the-month reports using daily log entries made by the technicians, checking with the technicians concerning needed parts and incoming and outgoing equipment shipments, and performing shipping and receiving work. However, it is questionable whether a distinction between office clerical and plant clerical work is even meaningful in this case, given the small scale of the Employer's Sunol operation and the highly integrated nature of its work. In this regard, I note that either Woodfield or a technician performed all of the administrative assistant's work during the 7-month period when the position was unfilled. Finally, I note that excluding Blakley solely on community-of-interest grounds would leave her, if Petitioner wins the election, the sole unrepresented employee at the facility, an undesirable result. See *Gateway Equipment Co., Inc.*, 303 NLRB 340 (1991). In all these circumstances, I find that the nature of Blakley's work, as well as her above-described common interests with the technicians and her daily contact and interaction with them, all make her inclusion in a unit of technicians appropriate. Accordingly, Maria Blakley is included in the unit herein.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including the station "supervisor" and administrative assistant, employed by the Employer at its Sunol, California earth station; excluding guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.³ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by TEAMSTERS LOCAL 78, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before April 19, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

³ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 26, 1999.

Dated at Oakland, California this 12th day of April, 1999.

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

32-1164

177-8520-1600
177-8560-9000
420-4617